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STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 26, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05KD-182

KAUAI

Sale of Remnant to Shawna Carol and Thomas Cobb, Kapaa,  
Kawaihau, Kauai, Tax Map Key: (4) 4-6-08: Portion 30.

APPLICANT:

Shawna Carol and Thomas Cobb, Husband and Wife, Tentants by the  
Entirety, whose mailing address is 6538 Kahuna Road, Kapaa,  
Hawaii, 96746.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government (Crown) Lands of Kapaa situated at Kapaa,  
Kawaihau, Kauai, identified by Tax Map Key: (4) 4-6-08: Portion  
30, as shown on the attached map labeled Exhibit A.

AREA:

4,820 square feet, more or less.

ZONING:

State Land Use District: Urban  
County of Kauai CZO: Residential

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State  
Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, states "Operations, repairs or maintenance of existing structures, facilities, involving negligible or no expansion or change of use beyond that previously existed."

DCCA VERIFICATION:

Applicant is a landowner and, as such, is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
- 2) Consolidate the remnant with the Applicant's abutting property through the County subdivision process; and
- 3) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

The parcel is a portion of an abandoned irrigation ditch right-of-way abutting the Applicant's property (Parcel 27).

Through research of this abandon irrigation ditch right-of-way the State of Hawaii back in the 1960s subdivided and sold portions of the ditch to abutting private lot owners.

Applicant is the owner of parcel (4) 4-6-08:27, as staff has confirmed with the County of Kauai Real Property Assessment Office.

The Applicant purchased Parcel 27 in October 2004. Through a survey of her property, it was determined that the access to her property and a portion of the existing fence line encroached on to the State abandoned irrigation ditch right-of-way. Through discussions with the Applicant's Attorney, Mr. Steve Lee, it was determined the purchase of the State abandoned irrigation ditch right-of-way would be in the best interest of everyone.

Other abutting properties to the subject remnant parcel include (4) 4-6-08: 62, 64 and 67. According to Section 171-52, HRS, if there is more than one abutting owner who is interested in purchasing the remnant, it shall be sold to the one submitting the highest sealed bid or, if the remnant abuts more than one parcel, the Board may subdivide the remnant so that a portion may be sold to each abutting owner.

Letters were sent to the adjoining property owners inquiring if they had any interest in purchasing a portion of the State abandoned irrigation ditch right-of-way. Ms. Dietra J. Wright (4-6-08:64) and Mr. and Mrs. David Galtres (4-6-08:62) did not respond. Eric and Gracinda Ishida, owners of Parcel 67, expressed interest in purchasing the portion the State abandoned irrigation ditch right-of-way abutting their property by a letter dated April 12, 2006. Applicants have no objections to the Ishida's request. The Ishida's request will be processed through a separate Board submittal. The Ishida's request would not affect this request from the Applicants.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Agency comments were solicited from

County of Kauai, Planning Department: No comments.  
County of Kauai, Department of Water: No objections. (Exhibit B)  
Department of Health: No response.  
DLNR Division of Aquatic Resources: (See Exhibit C)  
DLNR Historic Preservation Division: No objections.  
DLNR Office of Conservation and Coastal Lands: No response.  
Office of Hawaiian Affairs: No response.  
East Kauai Water user Cooperative: No response.

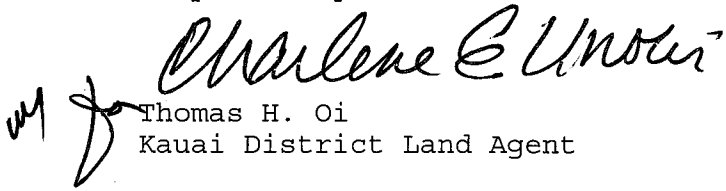
The selling of the abandoned irrigation ditch right-of-way to adjoining private property owners will lessen liability and maintenance responsibilities by the State. Staff supports the sale.

RECOMMENDATION:

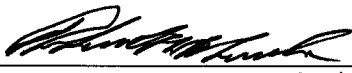
That the Board:

1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (4) 4-6-08:27, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Authorize the subdivision and consolidation of the subject remnant by the Applicant.
4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to Shawna Carol and Thomas Cobb covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

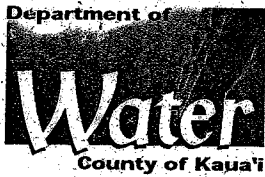
Respectfully Submitted,

  
Thomas H. Oi  
Kauai District Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson





Water has no substitute.....Conserve it

November 1, 2005

Mr. Thomas Oi  
DLNR  
P.O. Box 621  
Honolulu, HI 96809

RECEIVED  
LAND DIVISION  
2005 NOV - 2 P 4:03  
DEPT OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Dear Mr. Oi:

Subject: Request for Purchase of a Portion of Abandoned Ditch Right-of-Way  
Fronting Lot 63-C, TMK: 4-6-08:030, Kahuna Road, Kapa'a Homesteads,  
Kawaihau, Kaua'i

This is in regard to your letter dated October 10, 2005. We have no objections to the subject request. However, the applicant should be made aware that at the present time, the existing water storage facilities serving this area are operating at capacity. The Department of Water has a restrictive water meter policy that allows up to five (5) water meters/units per existing lot of record, until such time that adequate storage facilities are available. The policy will remain in effect for a period of five years. The Department will review the policy annually.

If you have any questions, please contact Mr. Edward Doi at (808) 245-5417.

Sincerely,

Gregg Fujikawa  
Chief of Water Resource and Planning Division

ED:ml  
25-443 Kapa'a Homesteads, Oi

AM 8:28:02

NOV 9 '05

DLNR KOLO RCVD

EXHIBIT B

**Hawaii Divison of Aquatic Resources**  
Department of Land & Natural Resources  
3060 Eiwa Street, Room 306  
Lihue, Kauai, Hawaii (USA) 96766  
Cellular Phone: (808) 645-0532; Email: [donheacock@midpac.net](mailto:donheacock@midpac.net)

MEMORANDUM {dlnrassmt\_abandon ditch easmt.doc}

To: Thomas Oi, Kauai District Land Agent  
Fm: Don Heacock, Kauai District Aquatic Biologist

**Subject: Ref. No.: 05KD-182: Request by adjacent land owner to purchase portion of abandoned ditch right-of-way fronting lot 63-C, TMK: (4) 4-6-8: 27**

Based on review of your 10 Oct. 05 memorandum and attachments I offer the following questions, comments and suggestions:

1. Is this ditch pre-historic or was it developed by the sugar plantation? If the ditch pre-dates the Mahele, number 2 below certainly is relevant;
2. The agency that has top-level legal authority over streams, rivers and ditches is the Commission on Water Resources Management (CWRM)<sup>1</sup>; CWRM should be contacted regarding this subject to assure that there are no kuleana (L.C. Awards) owners adjacent to this ditch (the fact that it is "abandoned", and that the East Kauai Water Users was not interested in it, are irrelevant because it can be restored) who have appurtenant water rights and ditch access right-of-ways. These rights would supersede all others.
3. The lands, irrigation ditch(s) and roadway easements in this subject are designated as "agricultural lands". The Hawaii State Constitution, Article XI, Section 1, sets policy for the state to strive to be "self-sufficient". How will the actions proposed in this subject improve Kauai's or the State's food self-sufficiency?

Mahalo for this opportunity to comment; if I may be of further help to you please contact me.

Sincere Aloha,

*Don E. Heacock*

Donald E. Heacock

AM 11:37:17

OCT 21 '05  
DLNR KDLO RCVD

<sup>1</sup> If you are referring to CWRM as DLNR-Water Resources Management, then please provide me with a copy of their comments to you.

EXHIBIT C